

LEG

14 August 1989
OCA 2909-89

MEMORANDUM FOR Chief, Administrative Law Division
Office of General Counsel

Chief, Logistics and Procurement
Law Division
Office of General Counsel

Chief, Special Investigations Staff
Office of Inspector General

FROM:

Legislation Division
Office of Congressional Affairs

STAT

SUBJECT: Amendment to the DoD Authorization Bill--
Requirement for Contractor Fraud Reports

1. I just received a copy of the attached Congressional Record and thought you should be aware of this amendment.

2. This amendment to the DoD Authorization Bill will require the President to submit a report to Congress by 30 September 1990. The report is to cover current and planned administrative procedures for informing and coordinating with relevant government agencies about administrative and judicial actions taken against government contractors for fraud or attempted fraud.

3. The DoD Authorization Bill has been approved by the House and Senate. It will most likely be considered by the Conference Committee in September.

4. If you have any questions or comments on this matter, please call me on

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Attachment

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for Contractor Fraud Reports

OCA/LEG/ [] (14 Aug 1989)

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S 9298

CONGRESSIONAL RECORD — SENATE

August 1, 1989

emerging science of gamma ray astronomy. We must do something to prevent our investment in many billions of dollars worth of present and future space hardware from being ruined by an insidious form of "space pollution." Accordingly, my amendment calls upon the President to urge the Soviets to reduce its reliance on nuclear reactors in orbit to eliminate their interference with our satellites. And the sooner the better.

But we need to make sure that our skirts are clean, too. The Energy and Natural Resources Committee held a hearing on space nuclear power last September in which NASA, the Defense Department, and the Department of Energy presented possible plans for using the United States' SP-100 nuclear reactor in space. So even if we can get the Soviets to stop their interference we could inflict this same problem on ourselves.

Accordingly, my amendment also calls on the President to report to Congress on the potential for interference by space nuclear reactors that we have under development, too.

Too often we ignore small problems, allowing them to grow into very large problems. My amendment is a small step in getting both Superpowers to come to grips now with what could become a very serious problem in the future. More steps may be needed in the near future, but this is a start. I urge the adoption of my amendment.

Mr. NUNN. Mr. President, in this amendment we ask the President of the United States for a report on the potential impact of gamma ray radiation from nuclear power sources for satellites on astronomy programs as designed to protect such radiation.

This amendment has been cleared on both sides.

The PRESIDING OFFICER. If there be no further discussion on the amendment, the question is on agreeing to the amendment.

The amendment (No. 635) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 636

(Purpose: To require the President to report to Congress on current administrative procedures to ensure that relevant agencies of the Government are informed when a Government contractor is being investigated or has been convicted of fraud, and for other purposes)

Mr. NUNN. Mr. President, I send an amendment to the desk on behalf of Senator BUMPERS, and ask that it be reported.

Mr. HARKIN. Mr. President, what happened to the pending amendment?

The PRESIDING OFFICER. Without objection, the Harkin amendment is laid aside.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. NUNN] for Mr. BUMPERS, proposes an amendment numbered 636.

Mr. NUNN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 293, between lines 13 and 14, insert the following new section:

SEC. : REPORT REGARDING COORDINATION OF INFORMATION WITHIN THE EXECUTIVE BRANCH ON FRAUD BY CONTRACTORS.

(a) IN GENERAL.—Not later than September 30, 1990, the President shall report to Congress on current and planned administrative mechanisms to coordinate information within the Executive branch concerning administrative and judicial actions taken against Government contractors as a result of activities described in subsection (b)(1).

(b) CONTENT OF REPORT.—The report required by subsection (a) shall include the following:

(1) A description of current administrative actions that will ensure that all relevant agencies are advised when there has been an investigation, proceeding, or litigation involving fraud on the part of a contractor (or an agent or employee of a contractor) that has resulted in a judgment against the contractor (or an agent or employee of the contractor), a decision to debar or suspend, or resolved by consent or compromise.

(2) Recommendations to enhance the effectiveness of the procedures described in paragraph (1).

(3) A discussion of the feasibility and desirability of requiring a review or audit of each contract of a value of more than \$1,000,000 or if the potential of recovery would justify such follow-up, that such contractor has, or has had, with any Government agency where similar problems may have occurred.

(4) Recommendations for any legislative changes necessary to accomplish the purposes of paragraphs (2) and (3).

(5) The estimated costs of implementing any recommendations described pursuant to paragraph (2).

(b) DEFINITIONS.—For the purposes of the report required by this section the term "fraud" means—

(1) acts of fraud or corruption or attempts to defraud the Government or corrupt its agents;

(2) acts which constitute a cause for debarment or suspension under part 9.408.2(a) or part 9.407-2(a) of the Federal Acquisition Regulation or successor parts of such regulation; and

(3) acts which violate any provision of sections 3729 through 3731 of title 31, United States Code, section 1031 of title 18, United States Code, or the Anti-Kickback Act of 1986 (41 U.S.C. 51-58).

Mr. BUMPERS. Mr. President, this amendment is a simple one. It asks the executive branch to report to us how they currently share information among the various agencies when one has exposed a contractor fraud situation, or has a consent decree.

This issue came up when I asked the Air Force a few months ago if they were aware that one of their contractors had signed a consent decree with

the Army involving several million dollars on a product similar to the one dealt with by the consent decree. Amazingly, they were unaware of this. To their credit, they immediately started investigating.

We all know that one Government agency often doesn't know what's happening with another agency. And that seems to be the case on contract fraud, or a consent order, or the like. The Justice Department told my staff that while there is usually awareness of such cases within an agency, there is no formalized mechanism for the interagency sharing of this material. That appears to be the case with my inquiry to the Air Force. They didn't know about the Army situation.

What is needed is some kind of clearinghouse in the executive branch for this kind of information. My amendment calls on the President to report to us on what mechanisms currently exist to coordinate such information, and asks him how he would propose to improve this. I hope some kind of clearinghouse proposal will come out of this, and that we can act on the proposals next year.

I want to thank the chairman and ranking minority member for the excellent help and cooperation they and their staff have provided on this issue. I particularly want to thank Andy Effron and Geary Burton of the majority staff and Jon Etheron of the minority staff for their outstanding assistance and help.

Mr. President, I urge the adoption of my amendment.

Mr. NUNN. Mr. President, this amendment would require the President to provide the Congress with a report on current and planned administrative mechanisms when the executive branch will coordinate information concerning administrative and judicial actions taken against Government contractors who are engaged in fraud in the performance of a Government contract.

This has been cleared on both sides, and I urge its approval.

The PRESIDING OFFICER. Is there further discussion of the amendment?

The Chair hears none.

The question is on agreeing to the amendment.

The amendment (No. 636) was agreed to.

The PRESIDING OFFICER. Without objection, the motion to reconsider is laid upon the table.

Mr. NUNN. Mr. President, I yield the floor temporarily.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 627 WITHDRAWN

Mr. MCCAIN. Mr. President, I ask unanimous consent to withdraw the second-degree amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.